

# **EXHIBIT 1**

## **MEDIATION AGREEMENT AND GUIDELINES**

Certain Parties to this Mediation Agreement (“Agreement”) have agreed to participate in a confidential voluntary mediation process pursuant to the Mediation Order (“Mediation Order”) entered August 15, 2013 by the Court in NECC Product Liability Litigation, MDL No. 1:13-md-2419-FDS (“MDL Court”). The purpose of the mediation is to attempt to arrive at a mutually acceptable resolution of the Parties’ dispute in a cooperative and informal manner, avoiding unnecessary, costly and protracted litigation, and conserving limited resources. These Guidelines supplement the provisions of the Mediation Order; in the event of any inconsistencies between this Agreement and the Mediation Order, the Mediation Order shall control.

### **MEDIATION PROCESS**

The Mediator(s) may:

- Review written information submitted by the Parties. Such information shall not be filed with any court and shall be confidential;
- Have private, confidential conversations with the participants to develop information about the Parties' contentions and objectives; and
- Conduct mediation sessions with representatives of the Parties and their counsel.

To facilitate a resolution, the Mediator(s) and the Parties and their counsel will work to ensure that each Party has reasonable and sufficient needed information to evaluate their position and appreciates the strengths and weaknesses of each of the Party’s factual and legal contentions. Both in the exchange of information and opinions, and in the evaluation of that information, each Party will have the opportunity and responsibility candidly to disclose to the Mediator(s) the facts, theories, and opinions on which it intends to rely with regard to the matters in dispute and in response to the mediator’s suggestion provide information to the other side necessary to evaluate their position. Notwithstanding, in order to conserve the resources of the Estate, requests directed to NECC and/or the Bankruptcy Trustee shall be directed in the first instance to the PSC and the informal discovery the Trustee has already provided to the PSC. The PSC may produce such necessary discovery as requested by the mediator in accordance with this Agreement and the Protective Order. The Trustee will consult with the mediator and/or other Parties as to what additional information, if any, may be necessary.

In addition, the mediation process will focus on the interests and objectives of the Parties and possible solutions that the Parties believe would be fair, equitable, and mutually beneficial. Accordingly, each Party will be asked to work with the Mediator(s) in considering and evaluating solutions that would satisfy its own interests and those of the other Party(ies) and be capable of obtaining any necessary bankruptcy court approvals.

The mediation session will be attended by representatives of the Parties with full settlement authority and counsel, subject to any restrictions which may be imposed by the Bankruptcy Code and MDL Court. Notwithstanding, the Bankruptcy Trustee and the Official Committee of Unsecured Creditors, who are Parties to this mediation, and/or their counsel, at their discretion, may attend any mediation session but are not required to. The Parties will follow the recommendation of the Mediator(s) regarding the agenda most likely to resolve the dispute. During the Mediation session, the Mediator(s) may have joint and separate meetings with the Parties and their counsel. Private meetings will be confidential *vis-à-vis* the other Parties. If a Party informs the Mediator(s) that information is conveyed by the Party to the Mediator(s) in confidence, the Mediator(s) shall not disclose the information.

At the discretion of the Mediator(s) or upon the request of any of the Parties, the Mediator(s) will provide an evaluation of the Parties' cases and of the likely resolution of the dispute if not settled. The Parties agree that the Mediator(s) is at all times a neutral intermediary and is not acting as an advocate or attorney or providing legal advice on behalf of any party.

If necessary and if such discussions seem likely to be useful, the Parties and/or their representatives will make themselves available for further discussions or meetings before or after the Mediation sessions.

Subject to the provisions of this Agreement concerning confidentiality, the Mediator(s) may report to the MDL Court on the status of the mediation process if requested to do so by the MDL Court.

### **INFORMATION EXCHANGE**

The Parties shall make the exchange of information required by the Mediation Order in Paragraph II, H "Informal Discovery" in accordance with a schedule as agreed to by the Parties or as determined by the Mediator(s). The Parties and Mediator(s) shall confer on what additional information is reasonable and necessary in order to productively mediate the matter and allow each Party to evaluate its position and appreciate the strengths and weaknesses of each of the other Party's factual and legal contentions. The Mediator(s) may recommend information be exchanged, and the timing and method and means of the providing the information.

### **POSITION STATEMENTS**

If requested to do so by the Mediator(s), the Parties shall provide to the Mediator(s) and exchange simultaneously with each other Position Statements of no more than thirty pages (exclusive of attachments) summarizing their factual and legal contentions at least ten (10) days in advance of the first mediation session. Notwithstanding, the Bankruptcy Trustee and the Official Committee of Unsecured Creditors, who are Parties to this mediation, and/or their counsel, at their discretion, may but are not required to submit Position Statements.

### **CONFIDENTIALITY**

This entire process is a compromise negotiation. All offers, promises, conduct and statements, and materials, records, plans, specifications, and/or documents produced, whether oral or written, made in the course of the mediation by any of the Parties, their agents, employees, experts and attorneys, and by RESOLUTIONS, LLC employees, who are the Parties' joint agents and Mediator(s) for purposes of these compromise negotiations, are confidential. Such offers, promises, conduct, statements, and materials, records, plans, specifications, and/or documents produced will not be disclosed to third parties and are privileged and inadmissible for any purpose, including impeachment, under Rule 408 of the Federal Rules of Evidence and any applicable federal or state statute, rule or common law provisions, including but not limited to the Massachusetts mediation privilege statute, G.L. c. 233, § 23C. However, evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or not discoverable as a result of its use in the mediation. The Parties and RESOLUTIONS, LLC also shall observe such additional confidentiality obligations as may be imposed by HIPAA, the Mediation Order, and any pertinent protective orders entered by the Court.

All individuals, representatives or entities, and their agents, employees, experts and attorneys, including but not limited to, the Bankruptcy Trustee, and the Official committee of Unsecured Creditors and their counsel, that attend the mediation session(s) shall be considered "Parties" for the purposes of the Agreement and will be bound by this Agreement's confidentiality provisions.

### **DISQUALIFICATION OF MEDIATOR(S) AND EXCLUSION OF LIABILITY**

The Parties agree not to call the Mediator(s) or any RESOLUTIONS, LLC employee as a witness or as an expert in any pending or subsequent litigation or arbitration involving the Parties and relating in any way to the dispute which is the subject of the mediation. The Parties and RESOLUTIONS, LLC agree that the Mediator(s) and any RESOLUTIONS, LLC employee will be disqualified as a witness or as an expert in any pending or subsequent proceeding relating to the dispute which is the subject of the mediation. The Parties agree to indemnify and defend the Mediator(s) and RESOLUTIONS, LLC from any subpoenas from outside parties arising out of this Agreement or mediation. The Parties agree that neither RESOLUTIONS, LLC nor any Mediator it provides is a necessary Party in any arbitral or judicial proceedings relating to the mediation or to the subject matter of the mediation. Neither

RESOLUTIONS, LLC nor its employees or agents, including the Mediator(s) shall be liable to any Party for any act or omission taken in good faith in connection with any mediation conducted under this Agreement.

**MISCELLANEOUS**

As provided in the Mediation Order, this is a voluntary, non-binding mediation process. The parties agree to participate in good faith in the mediation process, but any Party may terminate its participation for any reason by providing written notification to RESOLUTIONS, LLC and the other Parties. RESOLUTIONS, LLC may terminate the mediation process if, in the judgment of the Mediator(s), the Parties have reached impasse and further mediation efforts would not be productive.

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The Parties agree that Massachusetts law shall govern this Agreement.

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\_\_\_\_\_, Esq.

For:

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\_\_\_\_\_, Esq.

For:

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For: RESOLUTIONS, LLC